



California Environmental Protection Agency

Air Resources Board • Department of Pesticide Regulation • Department of Toxic Substances Control
Integrated Waste Management Board • Office of Environmental Health Hazard Assessment
State Water Resources Control Board • Regional Water Quality Control Boards



Linda S. Adams
Secretary for
Environmental Protection

Arnold Schwarzenegger
Governor

Certified Mail: 7003 1680 0000 6174 8036

September 20, 2006

Ms. Mee Ling Tung, Director
Alameda County Environmental Health
1131 Harbor Parkway, Suite 240
Alameda, California 94502

Dear Ms. Tung:

The California Environmental Protection Agency (Cal/EPA), Office of Emergency Services, and the Department of Toxic Substances Control conducted a program evaluation of the Alameda County Environmental Health's Certified Unified Program Agency (CUPA) on August 30 - 31, 2006. The evaluation consisted of a review of program elements, an in-office program review and field inspections. Following the evaluation, the state evaluators completed an Evaluation Summary of Findings, which was reviewed with your agency's program management.

The evaluation summary of findings includes identified deficiencies, corrective action to be taken and timeframes for correction of identified deficiencies. Two additional evaluation documents completed during the evaluation are the Program Observations and Recommendations and the Examples of Outstanding Program Implementation.

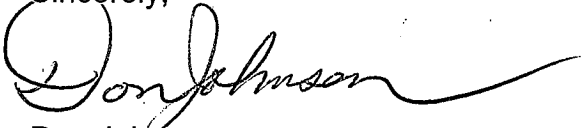
I have reviewed the enclosed copy of the Evaluation Summary of Findings and I find that Alameda County Environmental Health's program performance is satisfactory with some improvement needed. To complete the evaluation process, please provide quarterly reports to Cal/EPA of your progress toward correcting the identified deficiencies. Submit your quarterly reports to Kareem Taylor by the 15th of the month following each quarter. The first report of progress is due on November 29, 2006.

Cal/EPA also noted during this evaluation that Alameda County Environmental Health has worked to bring about a number of local program innovations. These include the use of a yahoo group to discuss UST issues with other CUPAs and the use of enforcement case settlement money to hold Designated Operator (DO) Workshops to assist UST Inventoried facilities in their DO ICC certification requirement. We will be sharing these innovations with the larger CUPA community through the Cal/EPA Unified Program web site to help foster a sharing of such ideas statewide.

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Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by email at jbohon@calepa.ca.gov.

Sincerely,



Don Johnson
Assistant Secretary
California Environmental Protection Agency

Enclosures

cc: Ms. Susan Hugo, Supervising Hazardous Materials Specialist (Sent Via Email)
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Mr. Brian Abeel (Sent Via Email)
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CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION SUMMARY OF FINDINGS

CUPA: Alameda County Environmental Health

Evaluation Date: August 30 - 31, 2006

EVALUATION TEAM

Cal/EPA: Kareem Taylor

OES: Brian Abeel

DTSC: Mark Pear

This Summary of Findings includes the deficiencies identified during the evaluation, observations and recommendations for program improvement, and examples of outstanding program implementation activities. The evaluation findings are preliminary and subject to change upon review by state agency and CUPA management. Questions or comments can be directed to Kareem Taylor at (916) 327-9557.

	<u>Deficiency</u>	<u>Preliminary Corrective Action</u>
1	<p>On the Annual Enforcement Summary Reports (Summary Report 4) for fiscal years (FYs) 02/03, 03/04, and 04/05, the CUPA did not correctly report facility violation types, enforcement actions, and fine/penalty information. Examples include the following:</p> <ul style="list-style-type: none"> According to the Annual Enforcement Summary Reports reviewed, the CUPA implemented informal enforcement in the HMRRP and UST program elements, but failed to record violations in the "other" violations column. In the "no. of informal enforcement actions" column, the CUPA recorded the total number of informal enforcement actions taken for each program element instead of the number of businesses that received informal enforcement actions. In the Annual Enforcement Summary Reports reviewed, the CUPA did report the 	<p>By September 30, 2006, correctly report the following information into the FY 05/06 Annual Enforcement Summary Report:</p> <ul style="list-style-type: none"> In the "other" column, report the number of businesses with violations. In the "no. of informal enforcement actions" column, report the number of businesses that received informal enforcement actions. In the fines/penalties assessed and collected columns, report the amount of penalties assessed and collected by the CUPA. <p>Report Annual Enforcement Summary Report information correctly for all future reports.</p>

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	<p>number of businesses that received formal enforcement; however, penalty amounts assessed and/or collected from businesses was not reported.</p> <p>Citation: Title 27, Section 15290 (a)(3)</p>	
2	<p>The self-audit reports for FYs 03/04 and 04/05 did not contain all of the required elements. The self audit reports were missing a narrative summary of the CUPA's inspection and enforcement activities. The narratives for the single fee activities and the fee accountability program need to be more descriptive.</p> <p>Citation: Title 27, Section 15280 (b)(2)(3)(6)</p>	<p>By September 30, 2006, submit the CUPA's FY 05/06 self-audit report to Cal/EPA that contains the descriptive narrative summaries of the inspection and enforcement activities, single fee activities, and the fee accountability program.</p> <p>For all future self-audit reports, include all of the required elements listed in the Title 27 regulations.</p>
3	<p>The CUPA does not have a CalARP dispute resolution procedure.</p> <p>Citation: Title 19, Section 2780.1</p>	<p>By November 30, 2006, the CUPA will develop a CalARP dispute resolution procedure that addresses all of the elements of Title 19, 2780.1.</p>
4	<p>The CUPA has not met the inspection frequency for the Business Plan Program.</p> <p>The CUPA is not inspecting all HMRRP facilities once every three years as required by law.</p> <ul style="list-style-type: none"> • In FY 02/03, the CUPA performed 62 routine inspections out of 522 HMRRP facilities. The CUPA's inspection rate for FY 02/03 is 12%. • In FY 03/04, the CUPA performed 199 routine inspections out of 595 HMRRP facilities. The CUPA's inspection rate for FY 03/04 is 33%. • In FY 04/05, the CUPA performed 125 	<p>By September 1, 2007, and annually thereafter, the CUPA will inspect at least one third (33% per year) of the businesses subject to the Business Plan Program.</p>

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	<p>routine inspections out of 654 HMRRP facilities. The CUPA's inspection rate for FY 04/05 is 19%.</p> <p>The percentage of inspections for the three year period of 02-05 was 65%.</p> <p>Citation: Chapter 6.95, Section 25508 (b)</p>	
5	<p>The CUPA's area plan has not been revised in the past three years.</p> <p>The CUPA's latest Area Plan is dated March 2002.</p> <p>Citation: Chapter 6.95, Section 25503 (d)</p>	<p>By November 30, 2006, the CUPA will develop a timeline for review and revision of the area plan.</p>
6	<p>The CUPA is not forwarding the data (Business Plan) collected, within 15 days of receipt and confirmation, to other local agencies in a format easily interpreted by those agencies with shared responsibilities for protection of the public health and safety and the environment.</p> <p>The CUPA forwards the portions of the Business Plan data collected bi-annually to the fire departments. According to the CUPA, the CUPA and the fire agencies have a verbal agreement on what and how often information is forwarded.</p> <p>Citation: Chapter 6.95, Section 25509.2 (a) (3)</p>	<p>By November 30, 2006, the CUPA shall forward the information within 15 days of receipt to the respective fire agencies or develop a memorandum of understanding between these fire agencies, and signed by all parties involved; specifying the agreement on what and how often information is forwarded.</p>
7	<p>The CUPA is not providing all information contained from completed inventory forms, upon request, to emergency rescue personnel on a 24-hour basis.</p> <p>After normal working hours, not all on-call personnel, for responding to hazardous material incidents, have access to business plan data. Alameda County has developed new provisions for who perform on-call duties for hazardous material</p>	<p>By November 30, 2006, the CUPA shall develop provisions for providing all information to on-call personnel and emergency rescue personnel on a 24-hour basis.</p>

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	<p>incidents; some of these on-call personnel are not part of the CUPA staff and do not have immediate access to business plan information.</p> <p>Citation: Chapter 6.95, Section 25503.5 (e)</p>	
8	<p>The self-audits FY 03/04, 05/06 did not include CalARP Program self-audit elements. A CalARP audit report shall be compiled annually based upon the previous fiscal year's activities and shall contain an executive summary and a brief description of how the CUPA is meeting the requirements of the program as listed in Section 2780.3. The audit shall include but is not limited to the following information:</p> <ol style="list-style-type: none"> (1) a listing of stationary sources which have been audited. (2) a listing of stationary sources which have been requested to develop RMPs. (3) a listing of stationary sources which have been inspected. (4) a listing of stationary sources which have received public comments on the RMP. (5) a list of new or modified stationary sources. (6) a summary of enforcement actions initiated by the AA identifying each stationary source. (7) a summary of the personnel and personnel years necessary to directly implement, administer, and operate the CalARP Program. (8) a list of those stationary sources determined by the AA to be exempt from the chapter pursuant to Section 25534(b)(2). <p>Citation:</p>	<p>By November 1, 2006, the CUPA shall conduct an audit of its activities to implement the CalARP Program.</p>

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	Title 19, Section 2780.5	
9	<p>The CUPA is not conducting inspections with a frequency that is consistent its Inspection and Enforcement Plan and with the inspection of other program elements. The CUPA has not inspected all 550 hazardous waste generators (HWGs) that have been identified by the CUPA. The last three annual inspection summary reports indicate the following:</p> <ul style="list-style-type: none"> • 515 hazardous waste generators were identified in Fiscal Year 02/03 of which 64 were inspected. • 582 hazardous waste generators were identified in Fiscal Year 03/04 of which 192 were inspected. • 550 hazardous waste generators were identified in Fiscal Year 04/05 of which 127 were inspected. <p>The CUPA has inspected approximately 70% of all known facilities generating hazardous waste over the past three fiscal years. Further improvement may be made.</p> <p>Citation: Title 27 Section 15200(b)(1)(2)</p>	<p>By July 31, 2007, allocate additional staff resources to the hazardous waste generator program. By July 31, 2007, and annually thereafter, the CUPA should conduct routine inspections of at least one-third (33%) of the CUPA's HWG facilities.</p>
10	<p>The CUPA does not have in its written policy and procedures a written acknowledgment of the receipt of Tiered Permitting notifications and a method to handle incomplete/inaccurate forms.</p> <p>Citation: Title 22, Section 67450.2(b)(4) states the Department (CUPA), within forty-five (45) calendar days of receipt of a notification submitted pursuant to subsection (b)(2) of this section, shall acknowledge, in writing, receipt of the notification. The Department shall, in conjunction with the acknowledgment, authorize operation of the FTU subject to the requirement and conditions specified in Sections</p>	<p>By January 1, 2007, the CUPA shall amend its written policy and procedures to include a written acknowledgment of PBR notifications along with identifying any corrections of inaccurate or incomplete forms from businesses.</p>

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	<p>67450.3, 67450.7 and 67450.9(b) and 67450.9(c), deny authorization to operate under a permit by rule pursuant to section 67450.9(a) or notify the owner or operator that the notification is incomplete or inaccurate. If the notification is incomplete or inaccurate, the Department shall specify what additional information or correction is needed. The Department shall authorize or deny authorization to operate as specified in this subsection within forty-five (45) days of receipt of the requested information or corrected notification. The Department shall reject the notification of any owner or operator who fails to provide the information or correction requested in the acknowledgment within (10) days of receipt of the acknowledgment. Upon good cause shown by the owner or operator, the Department shall grant the owner or operator additional time to provide the information or correction requested. An owner or operator whose notification is rejected may submit a new initial notification.</p>	
11	<p>The CUPA failed to take formal enforcement for the following Class I violations noted:</p> <ul style="list-style-type: none"> • The illegal disposal of hazardous waste paint into the trash drum, which was observed during the August 11, 2003 inspection conducted at Container Care located at 1523 Buena Vista Avenue in Alameda, CA, • The failure to provide secondary containment certified by a professional engineer for a treatment tank, which was observed during the April 25, 2003 inspection conducted at Metalco located at 1475 67th Street in Emeryville, CA. • The failure to provide manifests or receipts for the disposal of sludge from the operation of a waste water treatment unit noted during the June 24, 2005 inspection at Mariner Boat Yard located at 2021 Alaska Packer Place in Alameda, CA. In addition, it was observed that paint chips determined to be hazardous by lab analysis were allowed to migrate off 	<p>In the future, any Class I violations must be addressed through a formal enforcement action according to the State Enforcement Response Policy. For assistance in using DTSC Enforcement Response Policy EO-02-003-PP, please contact your DTSC CUPA liaison.</p>

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	<p>site as determined by the April 28, 2006 inspection.</p> <p>Citation: HSC, Section 25110.8.5</p>	
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CUPA Representative

SUSAN HUGO
(Print Name)

Susan L. Hugo
(Signature)

Evaluation Team Leader

Kareem Taylor
(Print Name)

Kareem Taylor
(Signature)

PROGRAM OBSERVATIONS AND RECOMMENDATIONS

1. **Observation:** In the self-audit reports for FYs 03/04 and 04/05, the CUPA included a list of answers to the self-audit guidance checklist questions. This requires the reviewer to obtain the self-audit checklist and refer to it constantly for each answer given on the self-audit report. This is not a very user-friendly format to follow especially if a reviewer does not have access to the self-audit guidance checklist.

Recommendation: Only use the self-audit guidance checklist as a guide for the self-audit report. Do not include the checklist or a list of the checklist answers to the self-audit report. Narrative summaries are what are required for many of the self-audit report elements. The purpose of narrative summaries is to give a reviewer a good contextual understanding of the activities of the CUPA program.

2. **Observation:** As has been stated in the deficiencies section, the CUPA is not meeting inspection frequencies for the HMRRP and Hazardous Waste Generator program elements.

Recommendation: The CUPA should prioritize inspections by inspecting facilities that have not been inspected for the longest period of time first.

3. **Observation:** If the CUPA does not finalize its area plan before the pesticide drift regulations mandated by SB 391 are finalized, the area plan will be subject to these revised regulations.

Recommendation: None offered.

4. **Observation:** Alameda County has changed who responds after normal working hours to hazardous material incidents. In the past, on-call duty officers for hazardous materials spills and releases were field staff who conducted the field inspections at, worked one-on-one with, and reviewed compliance submittals from hazardous material facilities complying with the CUPA programs and received necessary hazardous material spill and release training. Now the County has implemented new provisions that have personnel in supervisory positions acting as on-call duty officers for hazardous material spills and releases, whose job duties or professional backgrounds may not be associated with hazardous material: disclosure, emergency planning, emergency response, and emergency training. These non-specialized hazardous material on-call duty officers may lack the hazardous material expertise to provide adequate technical assistance during and at a hazardous material spill or release.

Recommendation: Either return to the former provisions having field staff filling the on-call duty officer position or train all supervisors, from the various disciplines, acting as on-call duty officers for hazardous material spills and releases, in the appropriate areas to ensure adequate protection of the public's health and safety and the environment.

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5. **Observation:** The CUPA was able to demonstrate that the following complaints which were referred by DTSC from January 1, 2004 to June 1, 2006 were investigated. Follow-up documentation could be found for Complaints Nos., 04-0404-0218, 04-0504-0292, 06-0206-0106, and 05-0805-0415, However, no follow up documentation could be found for the following complaints 06-0406-0176 and 06-0306-0111,

Recommendation: Ensure that all complaints are being received by the CUPA from DTSC by providing the e-mail address of the person who should receive complaints to [slaney@dtsc.ca.gov], complaint coordinator. Investigate and document all complaints referred. Investigation does not always entail inspection, as many issues may be resolved by other means such as a phone call. In any instance, it is suggested that all investigations be documented, either by inspection report or by "note to file" and placed in the facility file. Please notify the complaint coordinator of the disposition of all complaints

6. **Observation:** The CUPA inspector conducted a thorough and complete inspection. All record keeping relating to hazardous waste including manifests, contingency plan, training plan, training records, inspection schedules and logs were reviewed. Inspector appropriately observed, documented, and cited violations.

Recommendation: Keep up the good work.

7. **Observation:** The CUPA has created a draft AEO policy document for administering formal enforcement using the AEO process. The CUPA expects to implement the AEO process by May 2007.

Recommendation: Implement the AEO process by May 2007.

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EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION

1. On the UST inspection files, there is a “sticky” note on the outside of the files for each inspection performed. The note contains the inspection date and the first and last initials of the inspector that performed the inspection.
2. The CUPA’s active, inactive, and confidential hardcopy files are stored in separate filing areas. This allows for more efficient searches for facility information.
3. The Alameda County Environmental Health Department referred a civil case to the DA concerning SBC/AT&T that was settled for \$2,480,000 for the company 1) failing to annually test and certify underground storage tank monitoring systems, 2) failing to repair underground storage tank systems without required permits, 3) failing to maintain financial responsibility for taking corrective action, 4) failing to provide adequate training of all employees, 5) failing to maintain documentation of training of employees, 6) failing to maintain adequate hazardous material safety emergency response procedures, and lastly 7) failing to report releases of hazardous materials to an administering agency.
4. Part of the SBC/AT&T settlement money received by the CUPA is used to hold UST System Designated Operator (DO) Workshops to assist UST Inventoried facilities in their DO ICC certification requirement. Alameda County CUPA allows facilities from over CUPAs to attend the workshops. CUPA staff train the workshop attendees.
5. CUPA UST staff regularly utilizes a yahoo group to communicate with UST staff from other CUPAs about UST issues. Questions associated with USTs are asked and answered by the members of the group.
6. The Alameda County Environmental Health Department has developed an informative website, www.acgov.org, providing a directory of county services including hazmat.
7. The Alameda County Environmental Health Department has established permanent household hazardous waste collection centers which shall greatly aid in diverting household hazardous waste from CESQGs and personnel residences from the municipal landfills.
8. The Alameda County Environmental Health Department is a member of the Alameda County District Attorney’s Environmental Crimes Strike Force. The CUPA meets monthly with the District Attorney’s staff and other federal, state and local environmental regulators working within the county. The CUPA also maintains formal contact with the other environmental regulatory agencies through monthly meetings. These meetings allow staff to coordinate CUPA activities, to share information on regulatory compliance and enforcement issues, to maintain consistency on CUPA issues, and to provide a forum for training. In addition, the CUPA participates in CUPA coordination meetings on both regional and statewide levels.